



APPENDIX

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8544, October Term 1943.

UNITED STATES OF AMERICA

v.

HERMAN H. GRIEME, *Defendant-Appellant*

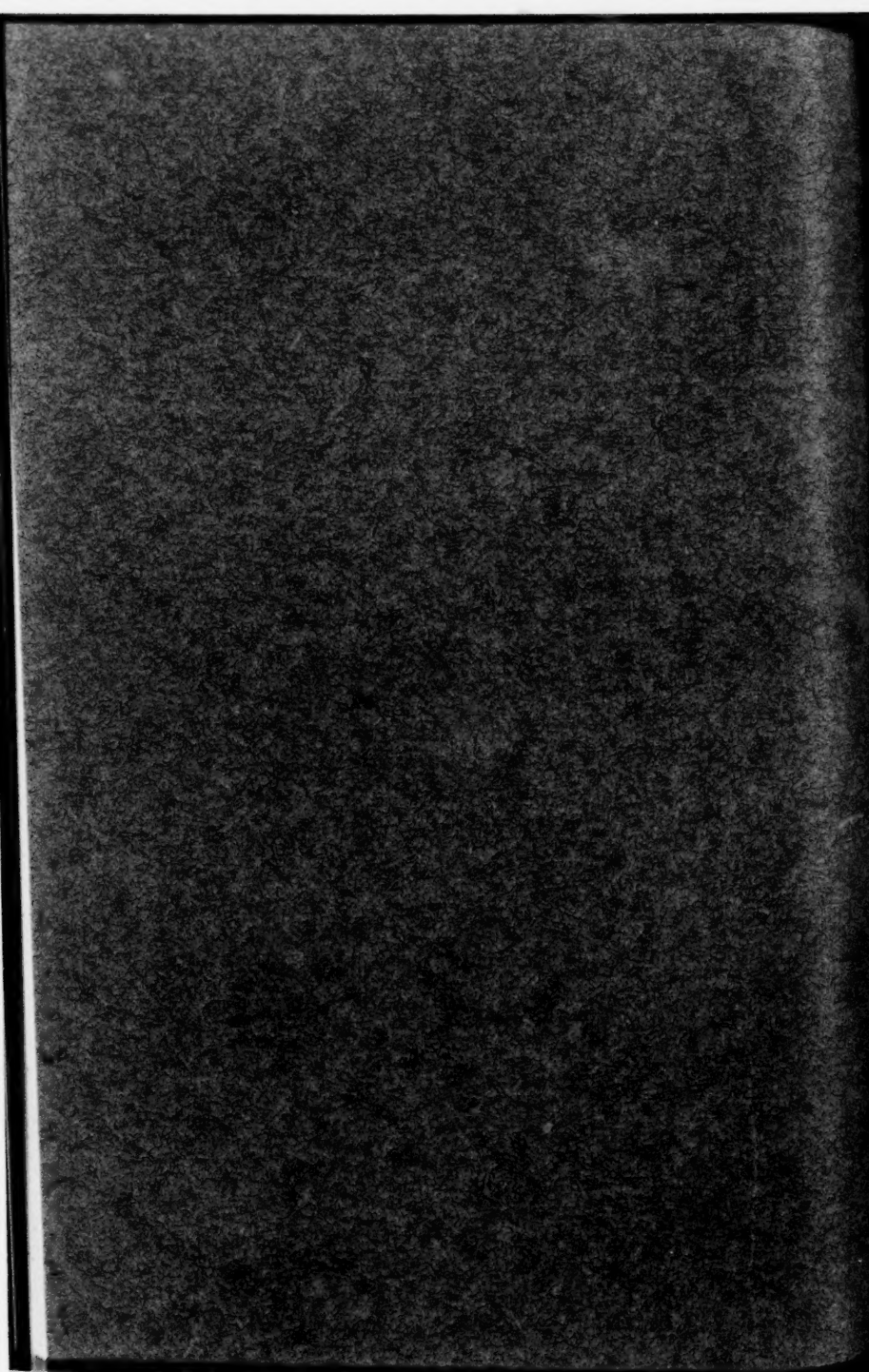
Appeal from the District Court of the United States for the
District of New Jersey.

Before BIGGS, JONES and McLAUGHLIN, *Circuit Judges.*

OPINION OF THE COURT [Filed March 15, 1944]

PER CURIAM:

Judgment is affirmed upon the authority of *Falbo v. United States*, [320] U. S. [549].



In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 883

HERMAN H. GRIEME, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was indicted in the United States District Court for the District of New Jersey for wilfully and knowingly failing to perform a duty required of him under the Selective Training and Service Act of 1940 (54 Stat. 885; 50 U. S. C. App. 301-318), in that he failed to report for work of national importance as required by an order duly issued to him by his local Selective Service Board pursuant to his classification in Class IV-E as a conscientious objector to both combatant and noncombatant military service (R. 2a-3a).

(1)

The Government proved at the trial that petitioner had been classified IV-E as a conscientious objector and that he had failed to report for work of national importance in accordance with an order of his local board (R. 4a-8a). In his own defense petitioner testified that he had failed to comply with the Board's order because "I am a minister of the Gospel and I am entitled to the classification as such, and my right as a minister under the Selective Service law, I refused to report to their induction because I believe that I am entitled to that classification" (R. 31a).

The court instructed the jury that the propriety of petitioner's Selective Service classification was not an issue for its determination and that the sole question before it was whether petitioner had been ordered to report for work of national importance and whether he knowingly and wilfully refused to report (R. 41a-42a).

Petitioner was convicted (R. 44a) and sentenced to imprisonment for three years (see R. 1a). Upon appeal to the Circuit Court of Appeals for the Third Circuit, the conviction was affirmed *per curiam* upon the authority of *Falbo v. United States*, 320 U. S. 549 (R. 97-98).

The instant case is on all fours with the *Falbo* case. Petitioner recognizes this, but he contends that in the *Falbo* case this Court inadvertently failed to determine the precise point at which a conscientious objector completes the administrative process so as to entitle him to challenge the

propriety of his classification in the courts. Petitioner argues that on the basis of this Court's decision in *Billings v. Truesdell*, No. 215, decided March 27, 1944, the process in the case of a conscientious objector is complete when he has passed the final type physical examination, and that since petitioner had proceeded that far, he was entitled to challenge the propriety of his classification in the criminal prosecution. (Pet. 1-2, 9-12.)¹ This argument, however, fails to recognize the significance of the distinction between the procedure formerly prescribed for the induction of registrants classified for military service and the process still prevailing for the assignment of persons classified as conscientious objectors to work of national importance. Formerly, as the Court noted in the *Billings* case, the prospective inductee did not receive the final type examination until he reported at the induction station pursuant to the induction order of his local board. In the case of a registrant classified as a conscientious objector, however, the final type examination is an intermediate step preceding the order to report for work of national importance, and even if the registrant successfully completes the examination, he is still subject to rejection when he subsequently reports to a civilian public

¹ Petitioner's argument is predicated upon his view of the *Billings* decision as holding that in the case of a registrant selected for military service the administrative process is complete when he passes the final type examination and is accepted preparatory to induction (see Pet. 9-10).

service camp.² Hence, as the Court said in the *Falbo* case, "in neither case is the order to report the equivalent of acceptance for service. Completion of the functions of the local boards and appellate agencies, important as are these functions, is not the end of the selective service process. The selectee may still be rejected at the induction center and the conscientious objector who is opposed to noncombatant duty may be rejected at the civilian public service camp." (320 U. S., at 553.) Petitioner's contention that he had exhausted the administrative process is thus foreclosed by the *Falbo* decision.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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ROBERT S. ERDAHL,
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IRVING S. SHAPIRO,
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MAY 1944.

² As the Court pointed out in the *Billings* case, substantially the same procedure for preinduction examination has since been adopted in respect of registrants classified for military service (slip opinion, pp. 9-10). For a discussion of the procedure for selection of conscientious objectors for work of national importance, see pp. 44, 56 of the Government's brief in the *Falbo* case, No. 73.

